



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2010-0861; FRL-9950-32-Region 6]

Approval and Promulgation of Implementation Plans; Texas; Revisions to the General Definitions for Texas New Source Review and the Minor NSR Qualified Facilities Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving and disapproving portions of revisions to the Texas State Implementation Plan (SIP) pertaining to the Texas New Source Review (NSR) program submitted on March 13, 1996; July 22, 1998; September 11, 2000; September 4, 2002; and October 5, 2010. Specifically, the EPA is approving the severable portions of the amendments to the General Definitions for the Texas NSR program, and the Minor NSR Qualified Facilities Program. The EPA is disapproving a severable portion of the General Definition of “modification of existing facility” submitted on October 5, 2010. We are taking these actions under section 110, parts C and D of the Clean Air Act (CAA).

DATES: This rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2010-0861. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, *e.g.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be

publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733.

FOR FURTHER INFORMATION CONTACT: Ms. Adina Wiley, (214) 665-2115, wiley.adina@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” and “our” means the EPA.

I. Background

The background for this action is discussed in detail in our May 2, 2016 proposal. *See* 81 FR 26180. In that document we proposed to approve the Texas Qualified Facilities Program as a component of the Texas Minor NSR program as submitted on October 5, 2010. We also proposed to approve several updates to the General Definitions for Permitting submitted from July 22, 1998 through October 5, 2010, with one exception. We proposed to disapprove the severable portion of the definition of “modification of existing facility” pertaining to modifications made at natural gas processing facilities without a case-by-case permit as submitted on October 5, 2010. We received comments from three parties; our response to the comments received on our proposed action are summarized below.

II. Response to Comments

Comment: We received two supportive comment letters from the Texas Commission on Environmental Quality (TCEQ) and the Texas Chemical Council, wherein the commenters reiterated the objectives of the proposed rulemaking and expressed support for the EPA finalizing as proposed.

Response: The EPA appreciates the support of the commenters. No changes were made to the proposed rule as a result of these comments.

Comment: The Lone Star Chapter of the Sierra Club submitted several comments regarding anti-backsliding requirements of the CAA. First, the commenter generally opposed any weakening in the Texas SIP if it fails to meet the anti-backsliding requirements of the CAA section 110(l) and stated that backsliding must not be allowed by the EPA in the Texas SIP. Second, the commenter provided a link to the TCEQ Agenda Item Request for the SIP Revision Adoption of the Houston-Galveston-Brazoria (HGB) Area Redesignation Substitute for the 1997 Eight-Hour Ozone National Ambient Air Quality Standard (NAAQS). The commenter stated that “If Sierra Club understands this Texas SIP change correctly, part of the proposal would significantly change the threshold for emissions that would trigger such controls/trading. The netting trigger would increase substantially (from 5 to 40), a major source would change from 25 to 100, and a major modification would go from 25 to 40. Companies would be able to break a modification into multiple, smaller modifications and effectively avoid controls. Texas urban air quality would suffer death from 1000 cuts. This unacceptable backsliding change could be devastating to air quality. Companies that were planning major air quality control projects in hopes of trading credits for profit are choosing not to make those improvements, because their potential market would disappear because of the proposed loophole.”

Response: The EPA understands the commenter’s concern about backsliding. We evaluate proposed revisions to a SIP under CAA section 110(l). This evaluation under section 110(l) is generally referred to as an “anti-backsliding demonstration” because it analyzes whether a proposed change to the SIP will result in “backsliding”; i.e., the scenario where a change to the Texas SIP would result in worsening air quality that could interfere with an area’s ability to

attain or maintain the NAAQS or interfere with any other applicable requirements of the CAA. We believe that the commenter has three main concerns: 1) the commenter is generally concerned that approval of the Texas Qualified Facilities Program will result in backsliding in the Texas SIP; 2) the commenter is concerned that approval of the redesignation substitute for the 1997 8-hour ozone NAAQS in the HGB nonattainment area will result in backsliding; and 3) the commenter is concerned that the Texas Qualified Facilities Program will result in backsliding upon the approval of the redesignation substitute for the 1997 8-hour ozone NAAQS in the HGB nonattainment area. We address each of these three concerns below.

First, as we explained in our proposed approval of the Texas Qualified Facilities Program at 81 FR 26180, 26182 – 26183, we have evaluated the program as a revision to the Texas Minor NSR SIP and with respect to the requirements of CAA section 110(l). Our evaluation shows that the program is designed to allow an existing permitted facility to increase allowable emissions, provided that another permitted facility has a corresponding decrease in permitted allowables.¹ The program requires enforceable changes be made to the underlying permits or authorizations to reflect the new allowable emission rate for each facility, and prohibits any net increase in permitted allowable emissions. The relevant TCEQ authorizations and permitting programs have all been SIP approved; each of these programs require the TCEQ to issue an authorization or permit that will be protective of the NAAQS and air quality consistent with the general permitting requirements at 40 CFR 51.160 – 51.164. As such, any existing permitted allowables have been issued at levels protective of air quality.² Therefore if permitted facilities trade

¹ The TCEQ has clarified in the preamble to the final adoption of the Qualified Facilities program that the term “facility” is consistent with the EPA’s use of the term “emissions unit.” *See* 35 TexReg 8944, 8960, October 1, 2010.

² Throughout this final rule, we use “permitted allowables” and “permitted facilities” to collectively refer to the allowable emission rates established via a SIP-approved authorization or permit program.

permitted allowable emission rates, there will be no backsliding in permitted allowable emissions. The inclusion of the qualified facilities changes into the relevant permits or authorizations further ensures that the changes are federally enforceable and will not violate Texas control strategies or interfere with attainment of the NAAQS, reasonable further progress, control measures, or PSD increment. *See* 35 TexReg 8944, 8960. The EPA continues to find that the Qualified Facilities Program will not result in backsliding of air quality requirements because the program is limited to permitted facilities and permitted emission allowables. No changes have been made to the proposed rule as a result of this comment.

Regarding the commenter's second concern, that the proposed approval of the redesignation substitute in HGB for the 1997 8-hour ozone NAAQS will result in backsliding, the EPA finds that this general concern is not relevant to the proposed approval of the Texas Qualified Facilities program into the Texas Minor NSR SIP. The EPA has proposed a separate action on the redesignation substitute request for the 8-hour ozone NAAQS for HGB and invited the public to submit comments specifically on the effect of the redesignation substitute in this separate action. See the separate rulemaking docket EPA-R06-OAR-2015-0609 and our proposed rulemaking at 81 FR 33166. We will address all comments received on the proposed redesignation substitute, including any comments received regarding the applicable major source and major modification thresholds in HGB, in this separate rulemaking action. No changes have been made to the proposed rule as a result of this comment.

While we are not addressing general concerns about the impact of the redesignation substitute in the HGB area in this action, we do believe it is appropriate to address the commenter's final concern that the use of the Qualified Facilities Program in HGB after the approval of the redesignation substitute will result in backsliding. The commenter is correct that

if and when the redesignation substitute is effective, the major source and major modification thresholds in HGB will increase because the only applicable nonattainment area designation in HGB will be the marginal designation for the 2008 8-hour ozone NAAQS. 40 CFR 81.344. The EPA believes it is likely that more new sources and modifications will be permitted under the SIP-approved Texas Minor NSR mechanisms as a result of the increased thresholds. While we anticipate an increase in the number of Minor NSR permitting actions and a correlative decrease in Major NSR permitting actions, we cannot predict whether more changes will occur using the Qualified Facilities Program versus other SIP-approved Minor NSR mechanisms. However, we disagree that any increase in usage of the Qualified Facilities Program under the applicable thresholds will result in backsliding of air quality requirements in the HGB nonattainment area. The Texas SIP includes a suite of approved permitting regulations for both Minor and Major NSR, which will continue to apply in the event of approval of the redesignation substitute in the HGB area. Each of these programs has been evaluated and approved by EPA as consistent with the requirements of the CAA and protective of air quality, including the requirements at 40 CFR 51.160 whereby the TCEQ cannot issue a permit or authorize an activity that will result in a violation of applicable portions of the control strategy or that will interfere with attainment or maintenance of a national standard. So moving forward to a time when the HGB area has a marginal designation as the only applicable nonattainment designation, new sources and modifications will continue to be permitted and authorized under the existing SIP requirements if they are determined to be protective of air quality. As explained in our proposed rulemaking, the Qualified Facilities Program can only be used by facilities with existing permits or authorizations – that means participating facilities were either permitted and authorized under the 1997 8-hour ozone requirements or will have to be authorized/permited under the new 2008 8-hour ozone

requirements before a qualified change occurs. Regardless, each participating facility will have a permitted allowable emission rate that may be increased commensurate with a simultaneous decrease in another permitted allowable emission rate; resulting in no net allowable increase. As explained in our proposed approval, relying on permitted allowable emissions is appropriate for a Minor NSR program. Further, a source can only use netting under the Qualified Facilities Program to the extent that any net increase in actual emissions is below the applicable major source threshold. Because the permitted allowable emission rates are established, or will be established, by the TCEQ as protective of air quality and the NAAQS, we continue to maintain that the use of the Qualified Facilities Program will function as proposed and will not result in backsliding. No changes have been made to the proposed rule as a result of this comment.

We also disagree that companies could legally break what would otherwise be major modifications into multiple, smaller changes using the Qualified Facilities Program to effectively avoid controls. The EPA views this practice as circumvention of Major NSR requirements. Based on our regulations, policy and guidance, any company circumventing Major NSR requirements by breaking modifications into multiple, smaller modifications or changes would be subject to possible enforcement actions.³

III. Final Action

Section 110(k)(3) of the Act states that the EPA may partially approve and partially disapprove a SIP submittal if we find that only a portion of the submittal meets the requirements of the Act. We find that the majority of the October 5, 2010 revision to the Texas SIP is

³ See 54 FR 27274, June 28, 1989. See also, EPA's June 13, 1989, Guidance on Limiting Potential to Emit in New Source Permitting; EPA's September 18, 1989, Response to the Request for Clarification of Policy Regarding the "Net Emissions Increase"; EPA's June 23, 1993, Memorandum on the Applicability of New Source Review Circumvention Guidance to 3M, Maplewood Minnesota; 75 FR 19570-71, April 15, 2010 (proposed rule); and EPA's August 26, 2011 Letter from Stephen Page, OAQPS, to David Isaacs, Semiconductor Industry Association, pages 6-8. All of these documents are included in the docket for this rulemaking.

approvable because the submitted rules are adopted and submitted in accordance with the CAA and are consistent with the EPA's regulations regarding NSR and Minor NSR. Therefore, the EPA approves the following as a revision to the Texas SIP under section 110 and parts C and D of the CAA:

- Substantive and non-substantive revisions to the General Definitions at 30 TAC Section 116.10, as initially adopted on June 17, 1998 and submitted on July 22, 1998 and revised through the October 5, 2010 submittal, with the exception of 30 TAC Section 116.10(9)(F). Note that 30 TAC Section 116.10(5)(F) has not been submitted or proposed for inclusion in the Texas SIP.
- New section 30 TAC Section 116.17 establishing the definitions for the Minor NSR Qualified Facilities Program as adopted by the State on September 15, 2010 and submitted on October 5, 2010.
- Substantive revisions to 30 TAC Section 116.116(e)(1) – (e)(11) creating the Texas Minor NSR Qualified Facilities Program as adopted by the State on September 15, 2010 and submitted on October 5, 2010.
- New section 30 TAC Section 116.117 establishing the documentation and notification requirements for the Minor NSR Qualified Facilities Program as adopted by the State on September 15, 2010 and submitted on October 5, 2010. Note that 30 TAC Section 116.117(a)(4)(B) has not been submitted or proposed for inclusion in the Texas SIP.
- Revisions to 30 TAC Section 116.311(a)(2), providing that revisions authorized under the Qualified Facilities Program are not subject the permit renewal provisions⁴ under 30 TAC

⁴ Note that the federal regulations under the CAA do not require a permit renewal process for an approved NSR program. See 40 CFR 51.160-51.166.

Section 116.311, as adopted by the State on June 17, 1998 and submitted on July 22, 1998; and further revised by the adoption of August 21, 2002 and submitted on September 4, 2002.

- The SIP narrative titled “Revisions to the State Implementation Plan (SIP) Concerning the Qualified Facility Program as Authorized by Senate Bill 1126” as submitted on October 5, 2010.

The EPA’s approval does not make federally enforceable any Qualified Facility actions that were authorized by the State before the effective date of the EPA’s final approval of the Qualified Facilities Program. Additionally, as a result of today’s final approval, we are revising the existing provisions in 40 CFR 52.2270(c) and (e) to show the correct approval status of the Texas Minor NSR Qualified Facilities program. We are also deleting the provisions codifying our prior disapproval of the Texas Minor NSR Qualified Facilities program at 40 CFR 52.2273(b)(1)(iii), (b)(1)(iv), and (b)(2) – (4), and our prior disapproval of the definition of “BACT” at 40 CFR 52.2273(d)(1)(i).

We are also disapproving the severable portion of the definition of “modification of existing facility” at 30 TAC Section 116.10(9)(F) pertaining to natural gas processing facilities as submitted on October 5, 2010. The EPA previously disapproved this provision on November 17, 2011, as promulgated at 30 TAC Section 116.10(11)(G) in the March 13, 1996; July 22, 1998 and the September 4, 2002 Texas SIP submittals. The state resubmitted the provision on October 5, 2010, unchanged with the exception of changing the numbering to 30 TAC Section 116.10(9)(F) and provided no additional evidence to substantiate inclusion in the Texas Minor NSR program or to address the anti-backsliding requirements under CAA section 110(l). As

such, we find that this provision is not clearly limited to Minor NSR and is disapprovable as inconsistent with the requirements of section 110 of the Act and the EPA's regulations under 40 CFR 51.160 – 51.164 regarding Minor NSR. The provision in subparagraph (F) in the definition of “modification of existing facility” that we are disapproving was not submitted to meet a mandatory requirement of the CAA. Therefore, EPA is not imposing any sanctions and no Federal Implementation Plan clocks will be triggered. *See* CAA section 179(a).

At this time the EPA is also finalizing several unrelated corrections to the Texas SIP to accurately reflect recent federal final actions.

- We are correcting 40 CFR 52.2270(c) to include 30 TAC Section 116.112 as part of the Texas SIP. On December 7, 2005, the EPA approved 30 TAC Section 116.112 – Distance Limitations as adopted by the TCEQ on January 14, 2004. *See* 70 FR 72720. As a result of this final approval, we included this provision in the table of EPA-Approved Regulations in the Texas SIP at 40 CFR 52.2270(c). 30 TAC Section 116.112 was inadvertently removed from 40 CFR 52.2270(c) due to a typographical error in a later final rulemaking. We have taken no action to remove the Distance Limitation provisions at 30 TAC Section 116.112 from the Texas SIP; therefore, we are merely correcting a clerical error.
- The EPA is also correcting 40 CFR 52.2270(c) to include the date and Federal Register citation for the EPA's final approval of 30 TAC Section 116.760 into the Texas SIP. This section was included in our final approval of the Texas Flexible Permits Program on July 14, 2014; however, the table in 40 CFR 52.2270(c) does not include the date or citation of EPA's approval. We are correcting this inadvertent omission.

- The EPA is clarifying the SIP status of 30 TAC Section 116.110(c). This section was returned to the TCEQ on June 29, 2011, as it was inappropriately submitted for inclusion in the Texas SIP. As such, we are revising 40 CFR 52.2270(c) to specify that 30 TAC Section 116.110(c) is not part of Texas' approved SIP.
- Additionally, the EPA is substantially revising 40 CFR 52.2273 to accurately reflect the disapproval status of the Texas SIP. We are deleting the following existing provisions; as a result of the deletions to 40 CFR 52.2273 described here, we are renumbering this section to improve readability.
 - 40 CFR 52.2273(d)(4)(viii) because of our January 6, 2014 final approval. *See* 79 FR 00551.
 - 40 CFR 52.2273(d)(5)(i) because of our November 10, 2014 final approval. *See* 79 FR 66626.
 - 40 CFR 52.2273(d)(5)(ii) because of our April 1, 2014 final approval. *See* 79 FR 18183.
 - 40 CFR 52.2273(f)(1) because of our April 1, 2014 final approval. *See* 79 FR 18183.

IV. Incorporation by Reference

In this rule, we are finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are finalizing the incorporation by reference of the revisions to the Texas regulations as described in the Final Action section above. We have made, and will continue to make, these documents generally available electronically through www.regulations.gov and/or in hard copy at the EPA Region 6 office.

V. Statutory and Executive Order Reviews

A. *Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. *Paperwork Reduction Act (PRA)*

This action does not impose an information collection burden under the PRA. There is no burden imposed under the PRA because this action merely proposes to approve state permitting provisions that are consistent with the CAA and disapprove state permitting provisions that are inconsistent with the CAA.

C. *Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities as identified in the RFA. This action merely proposes to approve state permitting provisions that are consistent with the CAA and disapprove state permitting provisions that are inconsistent with the CAA; therefore this action will not impose any requirements on small entities.

D. *Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector. This action merely approves state permitting provisions that are consistent with the CAA and disapproves state permitting provisions that are inconsistent with the CAA; and therefore will have no impact on small governments.

E. *Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This action does not apply on any Indian reservation land or any other area of Indian country where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it merely proposes to approve state permitting provisions that are consistent with the CAA and disapprove state permitting provisions that are inconsistent with the CAA.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard. This action merely proposes to approve state permitting provisions that are consistent with the CAA and disapprove state permitting provisions that are inconsistent with the CAA.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

L. Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 1, 2016.

Samuel Coleman,
Acting Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart SS – Texas

2. In §52.2270:

a. In paragraph (c), the table titled “EPA Approved Regulations in the Texas SIP” is amended by:

i. Revising the entries for Sections 116.10, 116.110, 116.116, 116.311, and 116.760.

ii. Adding entries for Sections 116.17, 116.112, and 116.117.

b. In paragraph (e), the table titled “EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP” is amended by adding the entry “Revisions to the State Implementation Plan (SIP) Concerning the Qualified Facility Program as Authorized by Senate Bill 1126” at the end of the table.

The revisions and additions read as follows:

§52.2270 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/Subject	State approval/ Submittal date	EPA approval date	Explanation
* * * * *				
Chapter 116 (Reg 6) – Control of Air Pollution by Permits for New Construction or Modification				
Subchapter A – Definitions				

Section 116.10	Definitions	9/15/2010	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	SIP does not include 30 TAC Section 116.10(5)(F) or 116.10(9)(F).
* * * * *				
Section 116.17	Qualified Facility Definitions	9/15/2010	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
* * * * *				
Subchapter B – New Source Review Permits				
Division 1- Permit Application				
Section 116.110	Applicability	8/9/2000	7/14/2014, 79 FR 40666	SIP includes 30 TAC Section 116.110(a)(3) adopted on 6/17/1998. SIP does not include 30 TAC Sections 116.110(a)(5), 116.110(c), or 116.110(d).
* * * * *				
Section 116.112	Distance Limitations	1/14/2004	12/7/2005, 70 FR 72720	
* * * * *				
Section 116.116	Changes to Facilities	9/15/2010	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	SIP does not include 30 TAC Section 116.116(b)(3).
Section 116.117	Documentation and Notification of Changes to Qualified Facilities	9/15/2010	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	SIP does not include 30 TAC Section 116.117(a)(4)(B).
* * * * *				
Subchapter D – Permit Renewals				
* * * * *				
Section 116.311	Permit Renewal Application	8/21/2002	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	SIP does not include 30 TAC Section 116.311(a)(6).

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Subchapter G: Flexible Permits				
* * * * *				
Section 116.760	Flexible Permit Renewal	11/16/1994	7/20/2015, 80 FR 42729	
* * * * *				
* * * * *				

(e) * * *

EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/effective date	EPA approval date	Comments
* * * * *				
Revisions to the State Implementation Plan (SIP) Concerning the Qualified Facility Program as Authorized by Senate Bill 1126	Statewide	9/15/2010	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	

3. Section 52.2273 is revised to read as follows:

§52.2273 Approval status.

(a) With the exceptions set forth in this subpart, the Administrator approves Texas' plan for the attainment and maintenance of the national standards.

(b) The EPA is disapproving the following Texas SIP revisions submittals under 30 TAC Chapter 35 – Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions as follows:

(1) The following provisions under 30 TAC Chapter 35, Subchapter A—Purpose, Applicability and Definitions:

(i) 30 TAC Section 35.1—Purpose—adopted November 18, 1998 and submitted December 10, 1998.

(ii) 30 TAC Section 35.2—Applicability—adopted November 18, 1998 and submitted December 10, 1998.

(iii) 30 TAC Section 35.3—Definitions—adopted November 18, 1998 and submitted December 10, 1998.

(2) The following provisions under 30 TAC Chapter 35, Subchapter B—Authority of the Executive Director:

(i) 30 TAC Section 35.11—Purpose and Applicability—adopted November 18, 1998 and submitted December 10, 1998.

(ii) 30 TAC Section 35.12—Authority of the Executive Director—adopted November 18, 1998 and submitted December 10, 1998.

(iii) 30 TAC Section 35.13—Eligibility of the Executive Director—adopted November 18, 1998 and submitted December 10, 1998.

(3) The following provisions under 30 TAC Chapter 35, Subchapter C—General Provisions:

(i) 30 TAC Section 35.21—Action by the Commission or Executive Director—adopted November 18, 1998 and submitted December 10, 1998.

- (ii) 30 TAC Section 35.22—Term and Renewal of Orders—adopted November 18, 1998 and submitted December 10, 1998.
- (iii) 30 TAC Section 35.23—Effect of Orders—adopted November 18, 1998 and submitted December 10, 1998.
- (iv) 30 TAC Section 35.24—Application for Emergency or Temporary Orders—adopted November 18, 1998 and submitted December 10, 1998. No action is taken on subsection (b) and paragraphs (e)(6)-(7) which are outside the scope of the SIP.
- (v) 30 TAC Section 35.25—Notice and Opportunity for Hearing—adopted November 18, 1998 and submitted December 10, 1998. No action is taken on paragraphs (e)(1)-(8) and (11)-(15) which are outside the scope of the SIP.
- (vi) 30 TAC Section 35.26—Contents of Emergency or Temporary Order—adopted November 18, 1998 and submitted December 10, 1998.
- (vii) 30 TAC 35.27—Hearing Required—adopted November 18, 1998 and submitted December 10, 1998.
- (viii) 30 TAC Section 35.28—Hearing Requests—adopted November 18, 1998 and submitted December 10, 1998.
- (ix) 30 TAC Section 35.29—Procedures for a Hearing—adopted November 18, 1998 and submitted December 10, 1998.

- (x) 30 TAC Section 35.30—Application Fees—adopted November 18, 1998 and submitted December 10, 1998.
- (4) The following provisions under 30 TAC Chapter 35, Subchapter K—Air Orders:
 - (i) 30 TAC Section 35.801—Emergency Orders Because of a Catastrophe—adopted November 18, 1998 and submitted December 10, 1998; revised June 28, 2006 and submitted July 17, 2006.
 - (ii) 30 TAC Section 35.802—Applications for an Emergency Order—adopted August 16, 1993 and submitted August 31, 1993 (as 30 TAC 116.411); revised November 18, 1998 and submitted December 10, 1998 (as redesignated to 30 TAC 35.802); revised June 28, 2006 and submitted July 17, 2006.
 - (iii) 30 TAC Section 35.803—Public Notification—adopted August 16, 1993 and submitted August 31, 1993 (as 30 TAC 116.412); revised November 18, 1998 and submitted December 10, 1998 (as redesignated to 30 TAC 35.803).
 - (iv) 30 TAC Section 35.804—Issuance of an Emergency Order—adopted November 18, 1998 and submitted December 10, 1998; revised June 28, 2006 and submitted July 17, 2006.
 - (v) 30 TAC Section 35.805—Contents of an Emergency Order—adopted August 16, 1993 and submitted August 31, 1993 (as 30 TAC 116.415); revised November 18, 1998 and submitted December 10, 1998 (as redesignated to 30 TAC 35.805); revised June 28, 2006 and submitted July 17, 2006.

- (vi) 30 TAC Section 35.806—Requirement to Apply for a Permit or Modification—adopted August 16, 1993 and submitted August 31, 1993 (as 30 TAC 116.416); revised November 18, 1998 and submitted December 10, 1998 (as redesignated to 30 TAC Section 35.806).
- (vii) 30 TAC Section 35.807—Affirmation of an Emergency Order—adopted August 16, 1993 and submitted August 31, 1993 (as 30 TAC 116.414); revised November 18, 1998 and submitted December 10, 1998 (as redesignated to 30 TAC Section 35.807); revised June 28, 2006 and submitted July 17, 2006.
- (viii) 30 TAC Section 35.808—Modification of an Emergency Order—adopted August 16, 1993 and submitted August 31, 1993 (as 30 TAC Section 116.417); revised November 18, 1998 and submitted December 10, 1998 (as redesignated to 30 TAC Section 35.808); revised June 28, 2006 and submitted July 17, 2006.
- (ix) 30 TAC Section 35.809—Setting Aside an Emergency Order—adopted August 16, 1993 and submitted August 31, 1993 (as 30 TAC Section 116.418); revised November 18, 1998 and submitted December 10, 1998 (as redesignated to 30 TAC Section 35.809).
- (c) The EPA is disapproving the Texas SIP revision submittals under 30 TAC Chapter 101—General Air Quality Rules as follows:
 - (1) The following provisions under 30 TAC Chapter 101, Subchapter F—Emissions Events and Scheduled Maintenance, Startup, and Shutdown Activities:
 - (i) 30 TAC Section 101.222 (Demonstrations): Sections 101.222(h), 101.222(i), and 101.222(j), adopted December 14, 2005, and submitted January 23, 2006.

(ii) [Reserved]

(2) [Reserved]

(d) The EPA is disapproving the following Texas SIP revisions submittals under 30 TAC

Chapter 116 – Control of Air Pollution by Permits for New Construction and Modification as follows:

(1) The following provisions under 30 TAC Chapter 116, Subchapter A – Definitions:

(i) Definition of “actual emissions” in 30 TAC Section 116.10(1), submitted March 13, 1996 and repealed and re-adopted June 17, 1998 and submitted July 22, 1998;

(ii) Definition of “allowable emissions” in 30 TAC Section 116.10(2), submitted March 13, 1996; repealed and re-adopted June 17, 1998 and submitted July 22, 1998; and submitted September 11, 2000.

(iii) Definition of “modification of existing facility” pertaining to oil and natural gas processing facilities adopted February 14, 1996 and submitted on March 13, 1996 at 30 TAC Section 116.10(11)(G); repealed and re-adopted June 17, 1998, submitted July 22, 1998; adopted August 21, 2002, and submitted September 4, 2002.

(iv) Definition of “modification of existing facility” pertaining to oil and natural gas processing facilities adopted September 15, 2010, and submitted October 5, 2010, as 30 TAC Section 116.10(9)(F).

(2) The following provisions under 30 TAC Chapter 116, Subchapter B – New Source Review Permits:

(i) 30 TAC Section 116.118 submitted March 13, 1996 and repealed and re-adopted June 17, 1998 and submitted July 22, 1998.

(ii) [Reserved]

(3) The following provision under 30 TAC Chapter 116, Subchapter K – Emergency Orders: 30 TAC Section 116.1200 – Applicability, adopted August 16, 1993 and submitted August 31, 1993 (as 30 TAC Section 116.410); revised November 18, 1998 and submitted December 10, 1998; revised January 11, 2006 and submitted February 1, 2006 (as redesignated to 30 TAC Section 116.1200).

(e) The EPA is disapproving the attainment demonstration for the Dallas/Fort Worth Serious ozone nonattainment area under the 1997 ozone standard submitted January 17, 2012. The disapproval applies to the attainment demonstration, the determination for reasonably available control measures, and the attainment demonstration motor vehicle emission budgets for 2012.